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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/264,775    03/09/99    FLINT    J    MOBT:174

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HM22/0605

EXAMINER
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CLARDY, S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED:

06/05/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

666020-9649260

# Office Action Summary

Application No.

09/264,775

Applicant(s)

Flint et al

Examiner

S. Mark Clardy

Group Art Unit

1616



☒ Responsive to communication(s) filed on Jun 2, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-23 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-23 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Claims 1-23 are pending in this application which claims priority to US provisional application 60/077,241, filed March 9, 1998.

Applicants' claims are drawn to herbicidal compositions and methods of using them in herbicide resistant crops, comprising glyphosate and another herbicide which is an ACCase<sup>1</sup> or AHAS<sup>2</sup> inhibiting herbicide, e.g., fluazifop, quizalofop, clethodim, sethoxydim, imazamox, or fenoxaprop (claims 2-7).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(c) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claims 1, 2, and 8 are rejected under 35 U.S.C. 102(a) and (b) as being anticipated by Stauffer (EP 0 144 137).

Stauffer teaches the synergistic herbicidal combination of glyphosate and fluazifop.

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<sup>1</sup>Acetyl CoA Carboxylase

<sup>2</sup>Acetohydroxyacid Synthase

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Stauffer, Rhone-Poulenc (GB 2 233 229), and Young et al<sup>3</sup>

Stauffer has been discussed above.

Rhone-Poulenc teaches that concentrated herbicidal compositions comprising glyphosate and a specific alkoxyated amine surfactant may be further combined with additional herbicidal agents such as the imidazolinones (p. 7, lines 18-26) in specific ratios (p. 8, lines 10-25).

Young et al teaches that ACCase inhibiting herbicides (sethoxydim, fluazifop-P, quizalofop-P, clethodim, and fluazifop plus fenoxaprop) behave similarly when applied to sethoxydim-resistant corn (Abstract).

One of ordinary skill in the art would be motivated to combine these references because Stauffer and Rhone-Poulenc teach the combination of glyphosate with additional herbicidal components, and because Young et al teach the equivalence of the ACCase inhibiting herbicides, as taught by Stauffer.

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<sup>3</sup>Young et al. "Control of Volunteer Sethoxydim-Resistant Corn (*Zea mays*) in Soybean (*Glycine max*)". *Weed Technology*. 11:649-655. 1997.

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Thus it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have combined glyphosate with the herbicides disclosed herein because the prior art teaches the combination with

No comparisons with the closest prior art have been presented. No unobvious or unexpected results are noted.

No claim is allowed.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103c and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is (703) 308-4550.

  
S. Mark Clardy  
Primary Examiner  
AU 1616

June 2, 2000